

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARTHUR BELFIORE,

Plaintiffs,

ANSWER

DEFENDANT DEMANDS A
TRIAL BY JURY

-against-

***Case No. 08-CV-2365
(LAP)(RLE)***

979 THIRD AVENUE ASSOCIATES, LLC, D&D
BUILDING COMPANY, LLC, COHEN BROTHERS
REALTY CORPORATION and TRICON
CONSTRUCTION SERVICES, INC.,

Defendant(s).

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Defendant, TRICON CONSTRUCTION SERVICES, INC., by its attorneys, ABRAMS,
GORELICK, FRIEDMAN & JACOBSON, P.C., as and for its Answer to plaintiff's Verified
Complaint allege, upon information and belief, as follows:

IN RESPONSE TO JURISDICTIONAL ALLEGATIONS

In Response to Subject Matter Jurisdiction – Diversity of Citizenship

1. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "1" of the Verified Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "2" of the Verified Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "3" of the Verified Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "4" of the Verified Complaint.

5. Admits each and every allegation set forth in paragraph “5” of the Verified Complaint.
6. To the extent that a response to paragraph “6” of the Verified Complaint is required, the Court is respectfully referred to plaintiff’s Verified Complaint, which speaks for itself and defendant refers all questions of law to the Court for determination.

In Response to Venue

7. To the extent that a response to paragraph “7” of the Verified Complaint is required, the Court is respectfully referred to plaintiff’s Verified Complaint, which speaks for itself and the answering defendant refers all questions of law to the Court for determination.

IN RESPONSE TO PLAINTIFF’S FIRST CAUSE OF ACTION

8. Repeats, reiterates and realleges each and every response to paragraphs designated “1” through “7”, inclusive, of the Verified Complaint in answer to paragraph designated “8” of the Verified Complaint, with the same force and effect as if fully contained herein.
9. Denies each and every allegation contained in paragraph “9” of the Verified Complaint and refers all questions of law to the Court for determination.
10. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “10” of the Verified Complaint.
11. Denies each and every allegation contained in paragraph “11” of the Verified Complaint and refers all questions of law to the Court for determination.

12. Denies each and every allegation contained in paragraph “12” of the Verified Complaint and refers all questions of law to the Court for determination.
13. Denies each and every allegation contained in paragraph “13” of the Verified Complaint and refers all questions of law to the Court for determination.
14. Denies each and every allegation contained in paragraph “14” of the Verified Complaint and refers all questions of law to the Court for determination.
15. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “15” of the Verified Complaint.
16. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “16” of the Verified Complaint.
17. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “17” of the Verified Complaint.
18. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “18” of the Verified Complaint.
19. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “19” of the Verified Complaint.
20. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “20” of the Verified Complaint.
21. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “21” of the Verified Complaint.
22. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “22” of the Verified Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph “23” of the Verified Complaint.
24. Denies each and every allegation contained in paragraph “24” of the Verified Complaint and refers all questions of law to the Court for determination.
25. Denies each and every allegation contained in paragraph “25” of the Verified Complaint and refers all questions of law to the Court for determination.
26. Denies each and every allegation contained in paragraph “26” of the Verified Complaint as they relate to defendant TRICON CONSTRUCTION SERVICES, INC., and refers all questions of law to the Court for determination.
27. Denies each and every allegation contained in paragraph “27” of the Verified Complaint as they relate to defendant TRICON CONSTRUCTION SERVICES, INC.
28. Denies each and every allegation contained in paragraph “28” of the Verified Complaint as they relate to defendant TRICON CONSTRUCTION SERVICES, INC., and refers all questions of law to the Court for determination.
29. Denies each and every allegation contained in paragraph “29” of the Verified Complaint as they relate to defendant TRICON CONSTRUCTION SERVICES, INC., and refers all questions of law to the Court for determination.
30. Denies each and every allegation contained in paragraph “30” of the Verified Complaint as they relate to defendant TRICON CONSTRUCTION SERVICES, INC., and refers all questions of law to the Court for determination.
31. Denies each and every allegation contained in paragraph “31” of the Verified Complaint.

32. Denies each and every allegation contained in paragraph “32” of the Verified Complaint.

IN RESPONSE TO PLAINTIFF’S SECOND CAUSE OF ACTION

33. Repeats, reiterates and realleges each and every response to paragraphs designated “1” through “32”, inclusive, of the Verified Complaint in answer to paragraph designated “33” of the Verified Complaint, with the same force and effect as if fully contained herein.
34. Denies each and every allegation contained in paragraph “34” of the Verified Complaint and refers all questions of law to the Court for determination.
35. Denies each and every allegation contained in paragraph “35” of the Verified Complaint and refers all questions of law to the Court for determination.
36. Denies each and every allegation contained in paragraph “36” of the Verified Complaint.

IN RESPONSE TO PLAINTIFF’S THIRD CAUSE OF ACTION

37. Repeats, reiterates and realleges each and every response to paragraphs designated “1” through “36”, inclusive, of the Verified Complaint in answer to paragraph designated “37” of the Verified Complaint, with the same force and effect as if fully contained herein.
38. Denies each and every allegation contained in paragraph “38” of the Verified Complaint and refers all questions of law to the Court for determination.
39. Denies each and every allegation contained in paragraph “39” of the Verified Complaint and refers all questions of law to the Court for determination.

40. Denies each and every allegation contained in paragraph “40” of the Verified Complaint.

IN RESPONSE TO PLAINTIFF’S FOURTH CAUSE OF ACTION

41. Repeats, reiterates and realleges each and every response to paragraphs designated “1” through “40”, inclusive, of the Verified Complaint in answer to paragraph designated “41” of the Verified Complaint, with the same force and effect as if fully contained herein.
42. Denies each and every allegation contained in paragraph “42” of the Verified Complaint and refers all questions of law to the Court for determination.
43. Denies each and every allegation contained in paragraph “43” of the Verified Complaint and refers all questions of law to the Court for determination.
44. Denies each and every allegation contained in paragraph “44” of the Verified Complaint.

IN RESPONSE TO PLAINTIFF’S FIFTH CAUSE OF ACTION

45. Repeats, reiterates and realleges each and every response to paragraphs designated “1” through “44”, inclusive, of the Verified Complaint in answer to paragraph designated “45” of the Verified Complaint, with the same force and effect as if fully contained herein.
46. Denies each and every allegation contained in paragraph “46” of the Verified Complaint and refers all questions of law to the Court for determination.
47. Denies each and every allegation contained in paragraph “47” of the Verified Complaint and refers all questions of law to the Court for determination.

48. Denies each and every allegation contained in paragraph “48” of the Verified Complaint.

AND AS FOR A FIRST AFFIRMATIVE DEFENSE

49. The Verified Complaint should be dismissed, in whole or in part, because it fails to state a claim against this answering defendant upon which relief can be granted.

AND AS FOR A SECOND AFFIRMATIVE DEFENSE

50. All claims should be dismissed to the extent that plaintiff did not satisfy all jurisdictional prerequisites or statutory conditions precedent to suit.

AND AS FOR A THIRD AFFIRMATIVE DEFENSE

51. This Court lacks subject matter jurisdiction over this action.

AND AS FOR A FOURTH AFFIRMATIVE DEFENSE

52. Without in any way waiving her objections to the jurisdiction of this Court, the answering defendant states that the venue is improper and laid in the wrong district.

AND AS FOR A FIFTH AFFIRMATIVE DEFENSE

53. All claims should be dismissed to the extent that they are barred by the applicable Statutes of Limitations and/or the doctrine of laches.

AND AS FOR A SIXTH AFFIRMATIVE DEFENSE

54. To the extent that plaintiff’s claims are compensable, in whole or in part, under the New York Worker’s Compensation Law, those claims are barred by the exclusive remedy provision contained in the New York Worker’s Compensation Law.

AND AS FOR A SEVENTH AFFIRMATIVE DEFENSE

55. To the extent that plaintiff failed to make good faith and diligent efforts to mitigate his purported damages and injuries, any relief awarded should be denied or diminished, in whole or in part.

AND AS FOR AN EIGHTH AFFIRMATIVE DEFENSE

56. If the plaintiff sustained injuries and/or damages, at the time and/or place and/or in the manner alleged in his Verified Complaint (which is expressly denied), said injuries and/or damages were, in whole or in part, the result of plaintiff's own culpable conduct, including, but not limited to, negligence, carelessness, recklessness and/or assumption of risk.
57. By reason of the foregoing, this answering defendant demand that the amount of any damages recovered or any judgment received by plaintiff be reduced accordingly, pursuant to the common law and CPLR § 1411, in the proportion to which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the injuries and/or damages.

AND AS FOR A NINTH AFFIRMATIVE DEFENSE

58. If plaintiff has received or will receive remuneration and/or compensation for some or all of his claimed economic loss, defendant is entitled to have plaintiff's award, if any, reduced by the amount of that remuneration and/or compensation, pursuant to § 4545(c) of the Civil Practice Law and Rules.

AND AS FOR A TENTH AFFIRMATIVE DEFENSE

59. If the plaintiff was damaged as alleged in his Verified Complaint (which is expressly denied), such damages were the result, in whole or in part, of the

conduct of the plaintiff and/or others over whom this answering defendant exercised no influence or control and to the extent that defendant may be liable to the plaintiff, such liability should be in proportion to the percentage that defendant's conduct relates to the conduct of the plaintiff and/or others in causing the damage, and apportioned pursuant to Articles 14 and 16 of the CPLR.

AND AS FOR AN ELEVENTH AFFIRMATIVE DEFENSE

60. That if the injuries and/or damages and the risks incident to the situation mentioned in the Verified Complaint were open, obvious and apparent, and were known and assumed by the plaintiff, then his claims are barred by virtue of his assumption of the risks thereof.

AND AS FOR A TWELFTH AFFIRMATIVE DEFENSE

61. That, to the extent that the alleged damages and/or injuries of plaintiff, if any, were caused or contributed to, in whole or in part, by intervening and superseding causative factors, the claims of plaintiff against this answering defendant should be barred.

AND AS FOR A THIRTEENTH AFFIRMATIVE DEFENSE

62. Pursuant to the limited liability provisions of § 1601 of the Civil Practice Law and Rules, this answering defendant's liability, if any, shall be limited to its respective equitable shares of the total liability.

**AS AND FOR A FIRST CROSS-CLAIM
AGAINST CO-DEFENDANTS, 979 THIRD AVENUE ASSOCIATES, LLC, D&D
BUILDING COMPANY, LLC, and COHEN BROTHERS REALTY CORPORATION**

63. That if the plaintiff was caused to sustain injuries and/or damages at the time and place and in the manner set forth in the plaintiff's Verified Complaint through any

carelessness, recklessness, negligence, acts, omissions, and/or breaches of duty and/or warranty and/or contract and/or statute, other than the plaintiff's own negligence, carelessness, recklessness, or other culpable conduct, said damages were sustained by reason of the carelessness, recklessness, negligence and/or affirmative acts of omission and commission including, but not limited to, breach of contract, and/or warranty and/or statute by the co-defendants, 979 THIRD AVENUE ASSOCIATES, LLC, D&D BUILDING COMPANY, LLC, and COHEN BROTHERS REALTY CORPORATION, their agents, servants and/or employees, without any negligence or other culpable conduct on the part of the answering defendant contributing thereto.

64. That by reason of the foregoing, the answering defendant will not be liable to the plaintiff or the co-defendants in the event and in the amount of recovery herein by the plaintiff, and the answering defendant is entitled to indemnification from the co-defendants.

**AS AND FOR A SECOND CROSS-CLAIM
AGAINST CO-DEFENDANTS, 979 THIRD AVENUE ASSOCIATES, LLC, D&D
BUILDING COMPANY, LLC, and COHEN BROTHERS REALTY CORPORATION**

65. That if the plaintiff was caused to sustain injuries and/or damages at the time and place and in the manner set forth in the plaintiff's Verified Complaint through any carelessness, recklessness, negligence, acts, omissions, and/or breaches of duty and/or warranty and/or contract and/or statute, or other culpable conduct, other than the plaintiff's own negligence, carelessness, recklessness, or other culpable conduct, and if plaintiff should recover a verdict or judgment against the answering defendant, they will be damaged thereby, and such injuries or damages

and verdict or judgment will have been brought about, cause and sustained by reason of the active and/or primary and/or affirmative carelessness, recklessness, negligence, culpable conduct and/or affirmative acts of omission and commission including, but not limited to, breach of contract, and/or warranty and/or statute and/or wrongdoing by the co-defendants, 979 THIRD AVENUE ASSOCIATES, LLC, D&D BUILDING COMPANY, LLC, and COHEN BROTHERS REALTY CORPORATION, their agents, servants and/or employees, without any negligence on the part of the answering defendant contributing thereto or with the negligence, if any, on the part of the answering defendant, which is specifically denied, being merely passive, secondary and/or derivative in nature. By reason of the foregoing, the answering defendant is entitled to indemnification by said co-defendants, 979 THIRD AVENUE ASSOCIATES, LLC, D&D BUILDING COMPANY, LLC, and COHEN BROTHERS REALTY CORPORATION.

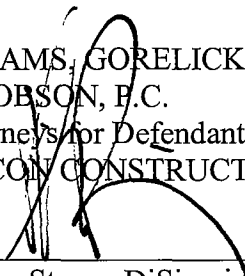
66. By reason of the foregoing, if plaintiff recovers any verdict or judgment against the answering defendant, the co-defendants 979 THIRD AVENUE ASSOCIATES, LLC, D&D BUILDING COMPANY, LLC, and COHEN BROTHERS REALTY CORPORATION, will be liable to the answering defendant under the doctrine of apportionment, contribution and/or indemnification for the full amount of any verdict and judgment, or for a proportional share thereof, that plaintiff may recover against or from the answering defendant, including, but not limited to, the costs of investigation and attorneys' fees and disbursements incurred in the defense of this action and the prosecution of this cross-claim, and the answering defendant will not be liable to

the co-defendants, 979 THIRD AVENUE ASSOCIATES, LLC, D&D BUILDING COMPANY, LLC, and COHEN BROTHERS REALTY CORPORATION, in the event and in the amount of any recovery herein by the plaintiff.

WHEREFORE, the answering defendant, the answering defendant, TRICON CONSTRUCTION SERVICES, INC., demands judgment dismissing the Verified Complaint as to it, together with the costs and disbursements of this action, or, in the alternative, demands that the ultimate rights of the plaintiff, answering defendant, and co-defendants, be determined in this action with regard to all claims, and cross-claims and that the answering defendant have judgment over and against the plaintiff, and the co-defendants, each of them, in the proportion that each of their culpable conduct bears to the entire culpable conduct involved in the occurrence, and have judgment over and against, and indemnity from the plaintiffs and the co-defendants together with the costs and disbursements of this action.

Dated: New York, New York
March 25, 2008

ABRAMS, GORELICK, FRIEDMAN &
JACOBSON, P.C.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ARTHUR BELFIORE,

Plaintiffs,

*Case No. 08-CV-2365
(LAP)(RLE)*

-against-

979 THIRD AVENUE ASSOCIATES, LLC, D&D
BUILDING COMPANY, LLC, COHEN BROTHERS
REALTY CORPORATION and TRICON
CONSTRUCTION SERVICES, INC.,

Defendant(s).

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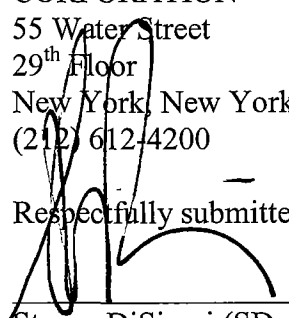
CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2008, the foregoing Answer was filed with the Clerk of the Court and served in accordance with the Southern District's Rules on Electronic Service and Local Rule 5.2 upon the following:

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Respectfully submitted,



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